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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,796	12/10/2003	Shalley K. Gupta	58182US004	5660
32692	7590	04/03/2006	EXAMINER	
3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427				HAMUD, FOZIA M
ART UNIT		PAPER NUMBER		
		1647		

DATE MAILED: 04/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/732,796	GUPTA ET AL.	
	Examiner Fozia M. Hamud	Art Unit 1647	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 December 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-18 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

***Election/Restrictions:***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-7, 10-16, drawn in part, to an expression system comprising a first expression control sequence comprising the nucleotide sequence set forth in SEQ ID NO:1, encoding the polypeptide of SEQ ID NO:2, and a second expression control sequence comprising an IFN- $\alpha$  promoter, a vector comprising said expression system and a cultured host cell comprising said system, classified in class 435, subclass 69.1.
  - II. Claims 1-7, 10-16, drawn in part, to an expression system comprising a first expression control sequence comprising the nucleotide sequence set forth in SEQ ID NO:3, encoding the polypeptide of SEQ ID NO:4, and a second expression control sequence comprising an IFN- $\alpha$  promoter, a vector comprising said expression system and a cultured host cell comprising said system, classified in class 435, subclass 69.1.
  - III. Claims 1-7, 10-16, drawn in part, to an expression system comprising a first expression control sequence comprising the nucleotide sequence set forth in SEQ ID NO:5, encoding the polypeptide of SEQ ID NO:6, and a second expression control sequence comprising an IFN- $\alpha$  promoter, a vector comprising said expression system and a cultured host cell comprising said system, classified in class 435, subclass 69.1.
  - IV. Claims 1-7, 10-16, drawn in part, to an expression system comprising a first expression control sequence comprising the nucleotide sequence set forth in

SEQ ID NO:7, encoding the polypeptide of SEQ ID NO:8, and a second expression control sequence comprising an IFN- $\alpha$  promoter, a vector comprising said expression system and a cultured host cell comprising said system, classified in class 435, subclass 69.1.

- V. Claims 1-7, 10-16, drawn in part, to an expression system comprising a first expression control sequence comprising the nucleotide sequence set forth in SEQ ID NO:9, encoding the polypeptide of SEQ ID NO:10, and a second expression control sequence comprising an IFN- $\alpha$  promoter, a vector comprising said expression system and a cultured host cell comprising said system, classified in class 435, subclass 69.1.
- VI. Claims 1-7, 10-16, drawn in part, to an expression system comprising a first expression control sequence comprising the nucleotide sequence set forth in SEQ ID NO:11, encoding the polypeptide of SEQ ID NO:12, and a second expression control sequence comprising an IFN- $\alpha$  promoter, a vector comprising said expression system and a cultured host cell comprising said system, classified in class 435, subclass 69.1.
- VII. Claims 1-7, 10-16, drawn in part, to an expression system comprising a first expression control sequence comprising the nucleotide sequence set forth in SEQ ID NO:13, encoding the polypeptide of SEQ ID NO:14, and a second expression control sequence comprising an IFN- $\alpha$  promoter, a vector comprising said expression system and a cultured host cell comprising said system, classified in class 435, subclass 69.1.

VIII. Claims 1-7, 10-16, drawn in part, to an expression system comprising a first expression control sequence comprising the nucleotide sequence set forth in SEQ ID NO:15, encoding the polypeptide of SEQ ID NO:16, and a second expression control sequence comprising an IFN- $\alpha$  promoter, a vector comprising said expression system and a cultured host cell comprising said system, classified in class 435, subclass 69.1.

IX. Claims 1-7, 10-16, drawn in part, to an expression system comprising a first expression control sequence comprising the nucleotide sequence set forth in SEQ ID NO:17, encoding the polypeptide of SEQ ID NO:18, and a second expression control sequence comprising an IFN- $\alpha$  promoter, a vector comprising said expression system and a cultured host cell comprising said system, classified in class 435, subclass 69.1.

X. Claims 1-7, 10-16, drawn in part, to an expression system comprising a first expression control sequence comprising the nucleotide sequence set forth in SEQ ID NO:19, encoding the polypeptide of SEQ ID NO:20, and a second expression control sequence comprising an IFN- $\alpha$  promoter, a vector comprising said expression system and a cultured host cell comprising said system, classified in class 435, subclass 69.1.

XI. Claims 8-9, 17-18, to drawn to an agonist, class and subclass undeterminable.

The inventions are distinct, each from the other because of the following reasons:

The expression systems of Groups I-X are patentably distinct, because they comprise nucleotide sequences which possess characteristic differences in structure

and function, that is distinct for each invention which cannot be exchanged. For example, the expression system of Group I comprises the nucleic acid of SEQ ID NO:1, which consists of 2832 bases and encodes the polypeptide of SEQ ID NO:2, which consists 786 amino acid residues, while the expression system of Group VII comprises the nucleic acid of SEQ ID NO:13, which consists 5007 bases and encodes the polypeptide of SEQ ID NO:14, consisting of 1049 amino acid residues. Thus, the expression systems of Groups I-X comprise nucleotide sequences encoding different proteins, which are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute independent and distinct inventions within the meaning of 35 U.S.C. 121. (See MPEP §2434).

Inventions I-X are patentably distinct from invention XI, because the agonist of Group XI does not appear to comprise any of the nucleic acids of Groups I-X.

Having shown that these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and recognized divergent subject matter as defined by MPEP § 808.02, the Examiner has *prima facie* shown a serious burden of search (see MPEP § 803). Therefore, an initial requirement of restriction for examination purposes as indicated is proper.

3. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one

or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

***Advisory Information:***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fozia M. Hamud whose telephone number is (571) 272-0884. The examiner can normally be reached on Monday, Thursday-Friday, 6:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda G. Brumback can be reached on (571) 272-0961. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Fozia Hamud  
Patent Examiner  
Art Unit 1647  
29 March 2006



EILEEN B. O'HARA  
PRIMARY EXAMINER